

# MICHIGAN SUPREME COURT



## *Office of Public Information*

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FOR IMMEDIATE RELEASE

### **POSSIBLE RULES FOR CHALLENGES TO MEDICAL MALPRACTICE FILINGS ON AGENDA FOR MICHIGAN SUPREME COURT'S OCTOBER 8 PUBLIC ADMINISTRATIVE CONFERENCE**

LANSING, MI, October 8, 2009 – Proposed rule changes setting time limits on challenges to certain filings in medical malpractice cases will be on the agenda for the [Michigan Supreme Court's](#) public administrative conference today. The proposals relate to notices of intent, affidavits of merit, and affidavits of meritorious defense.

Under state law, a person may not sue for medical malpractice without first giving a “notice of intent” to sue (NOI) to the health care professional or health facility that the plaintiff intends to sue. The NOI is required by MCL 600.2912b, which provides that the health professional or health facility must receive written notice “not less than 182 days before the [medical malpractice] action is commenced.” The NOI must include certain information, such as the factual basis for the claim, the applicable standard of practice or care, the names of all potential defendants being notified, the manner in which the defendant allegedly breached the standard and caused the plaintiff’s injury, and the alleged action that should have been taken to comply with the standard. A defendant has 154 days to respond in writing to the NOI.

The medical malpractice statute also provides that a medical malpractice complaint must be accompanied by an “affidavit of merit” (MCL 600.2912d) from a health care professional who has reviewed the plaintiff’s case. The affidavit of merit must state the applicable standard of practice or care and give the health care professional’s opinion as to how the standard was breached, how the breach caused the plaintiff’s injuries, and what the defendant should have done to comply with the standard. Similarly, in filing an answer to a medical malpractice complaint, a defendant is required to file an “affidavit of meritorious defense” (MCL 600.2912e), signed by a potential expert witness for the defense, in response to the claims in the plaintiff’s complaint.

The proposal before the Supreme Court ([ADM 2009-13](#)) would amend Michigan Court Rule (MCR) 2.112 to provide that, unless a court allows a later challenge for good cause, a defendant must raise any challenge to an NOI – for example, that the NOI failed to give proper notice to all those being sued – at the time the defendant files its first answer to the complaint. The proposed amendment further provides that “all challenges to an affidavit of merit or affidavit of meritorious defense, including the qualifications of the signer, must be made within 63 days of service of the affidavit on the opposing party.”

Under the amendment to MCR 2.112 and a proposed revision of MCR 2.118, a party would be allowed to amend an insufficient affidavit “unless ... amendment would not be justified.” The amendment would relate back to the date the affidavit was originally filed.

The proposed rule changes have garnered support from the State Bar of Michigan, the State Bar Negligence Law Section, the Michigan Association for Justice, and the Michigan Judges Association. Others, including the Michigan Osteopathic Association, oppose the rule changes as being unnecessary. Comments may be viewed online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#C02>.

Included on the Court’s agenda are other possible court rule changes, an update from Chief Justice Marilyn Kelly, approval of minutes from prior conferences, and additional administrative matters. The conference is open to the public.

The conference, which will begin at 9:30 a.m., will take place in the Court’s courtroom on the 6<sup>th</sup> floor of the [Michigan Hall of Justice](#) in Lansing. The proceedings will be broadcast on Michigan Government Television; go to [www.mgtv.org](http://www.mgtv.org) for program schedules. Video of the conference may also be viewed online at the State Bar of Michigan “Virtual Court” web site at <http://www.michbar.org/courts/virtualcourt.cfm>. Video is posted online within 24 to 48 hours of the conference.

The agenda for this and future conferences may be viewed online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/AdminConf.htm>.

Other agenda items include:

1. [ADM 2005-32](#) Pilot Project in D46 Regarding Clerk’s Return of Pleadings.  
*Whether the administrative order authorizing a pilot project in 46<sup>th</sup> District Court (Southfield) should include a provision regarding a submission of a final report by D46 within three months after the end of the pilot project, and specific survey requirements.*
2. [ADM 2008-13](#) Proposed New Rule 1.15A of the Michigan Rules of Professional Conduct.  
*Whether to adopt proposed new Rule 1.15A of the Michigan Rules of Professional Conduct to require attorneys to maintain client trust accounts in approved financial institutions, which would agree to notify the Attorney Grievance Commission and the lawyer if the lawyer’s trust account is overdrawn.*
3. [ADM 2009-04](#) Proposed New Rule 2.003-SC of the Michigan Court Rules.  
*Whether to adopt revised new Rule 2.003-SC of the Michigan Court Rules to establish specific rules to be used for disqualification of a justice.*

4. [ADM 2005-42](#) Proposed Amendment of Rule 3.932 of the Michigan Court Rules.  
*Whether to adopt the amendment of Rule 3.932 of the Michigan Court Rules to require a court to report to the Secretary of State violations of the Michigan Vehicle Code that are handled on the court's consent calendar in juvenile proceedings and fulfill the reporting requirements imposed by MCL 712A.2b(d) when violations occur.*
5. ADM 2008-25 Proposed Amendment of Rule 6.433(C) of the Michigan Court Rules.  
*Whether to amend MCR 6.433(C) to require a showing of good cause before a defendant may obtain a second copy of court records for purposes of seeking postconviction relief in state or federal court.*
6. ADM 2009-06 Proposed Amendments of Rules 5.5 and 8.5 of the Michigan Rules of Professional Conduct.  
*Whether to publish for comment the proposed amendments of Rules 5.5 and 8.5 of the Michigan Rules of Professional Conduct.*
7. ADM 2009-15 Proposed Adoption of LCR 2.612.  
*Whether to adopt LCR 2.612 to clarify the procedure established in Administrative Order No. 2006-2 for the redaction of social security numbers improperly filed with the Sixth Circuit Court.*
8. ADM 2009-16 Proposed Adoption of LCR 2.302.  
*Whether to adopt LCR 2.302 to eliminate the inclusion of private or confidential information and/or documents in the public court file in the Sixth Circuit Court.*
9. ADM 2009-12 Establishment of Rules Regarding Administrative Conferences.
  - *Whether to adopt a rule to require that statements be submitted within 14 days after the Court takes action on an item, with an additional 14 days for further comment.*
  - *Whether to change the format of administrative conference.*
  - *Whether to retain existing Rule 6 that state "Members of the Court may call for a closed session by majority vote."*

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